

## **Board Administration and Regulatory Coordination Unit**

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### **Division 3. Air Resources Board**

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### **Chapter 1. Air Resources Board**

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### **Subchapter 1.25. Administrative Procedures--Hearings**

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### **Article 4. Administrative Hearing Procedures for Review of Citations**

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### **Subarticle 7. Discovery, and Subpoenas and Subpoenas Duces Tecum**

#### **§ 60075.27. Proceeding to Compel Discovery.**

(a) Any party claiming that its request for discovery pursuant to this section has not been complied with or that the opposing party has failed to comply with a stipulated agreement to provide discovery may serve and file with the hearing officer a motion to compel the party who has refused or failed to produce the requested or stipulated discovery to comply. The motion shall state facts showing the party has failed or refused to comply with a discovery request or stipulation, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable, that a reasonable and good faith attempt to contact the noncomplying party for an informal resolution of the issue has been made, and the grounds of the noncomplying party's refusal so far as known to the moving party.

(b) The motion shall be filed within 15 days after the date the requested materials were to be made available for inspection and copying or the date a deposition was scheduled to take place and served upon the party who has failed or refused to provide discovery.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is filed, or a later time that the hearing officer may on his or her own motion for good cause determine. The party who has refused or failed to provide discovery shall have the right to serve and file a written answer or other response which shall be due at the hearing office and personally served on all parties at least three days prior to the date set for hearing.

(d) Where the matter sought to be discovered is under the custody or control of the party who has refused or failed to provide discovery and that party asserts that the matter is not a discoverable matter under this section, or is privileged against disclosure, the hearing officer may order that the party in custody lodge with the hearing office the matters identified in subdivision (b) of section 915 of the Evidence Code and the hearing officer shall examine the matters in accordance with those provisions.

(e) The hearing officer shall decide the case on the matters examined in a closed meeting, the papers filed by the parties, and such oral argument and additional evidence as the hearing officer may allow.

(f) Unless otherwise stipulated by the parties, the hearing officer shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover. The hearing office shall serve a copy of the order by mail upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

(g) If after receipt of an order directing compliance with the provisions of these rules regarding discovery, a party fails, without good cause, to comply with the order, the hearing officer may draw adverse inferences against that party and may prevent that party from introducing any evidence that had been requested and not produced during discovery into the administrative record.

NOTE: Authority cited: Sections 39600, 39601, 43028, 43031(a) and 44011.6(m), Health and Safety Code. Reference: *Mathews v. Eldridge*, 424 U.S. 319 (1976); Sections 43028, 43031(a) and 44011.6, Health and Safety Code; and Sections 11186-11188 and 11507.7, Government Code.

#### **REFERENCE**